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FILE: EAC 02 295 50999 Office: VERMONT SERVICE CENTER Date: AUG 12 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time he filed the petition, the petitioner was a graduate student at Brandeis University. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The

burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

In an introductory letter submitted with the petition, the petitioner describes his work:

I am a fifth year Ph.D. candidate, majoring in synthetic organic and medicinal chemistry at the Chemistry Department of Brandeis University. . . .

After my graduation, I will join Professor [Eric R.] Jacobsen's group in the department of chemistry and chemical biology at Harvard University as [a] research scientist. [REDACTED] is regarded as one of the world's leaders in the development of new synthetic methods that are particularly important to both the discovery and manufacturing of drugs.¹ Specifically, his research interests focus on two themes: the invention and development of new catalytic and asymmetric reactions for the preparation of pharmaceutical interest compounds, and the application of these new reactions to the efficient synthesis of bioactive natural products and drugs. . . .

My study in Professor Deng's group has been focused on the development of new and practical catalytic asymmetric alcoholysis (AA) reactions for the preparation of chiral hemiesters, which are fundamentally important versatile intermediates for the preparation of many pharmaceutically important compounds and/or drugs. . . .

My contributions in drug discovery and development, in particular, have prospectively benefited the United States by improving research, development, and treatment of high cholesterol, coronary heart disease, septic shock, rheumatoid arthritis (RA), Crohn's disease, angina pectoris, thrombosis, asthma, hypertension, [and] spasticity as well as different cancers, including pepticular and gastric (stomach) cancer. . . .

The method I have developed is regarded by world leading experts as "*a significant breakthrough discovery in this area.*" . . . To produce optical active hemiesters in a catalytic,

¹ The petitioner offers no evidence to support this claim. According to the record, [REDACTED] own postdoctoral training concluded in 1998, immediately prior to [REDACTED] appointment to an assistant professorship (the lowest rank of professorship) at Brandeis.

practical, efficient and highly enantioselective fashion is a long-standing problem in organic synthesis because optically active hemiesters are fundamentally important intermediates for both the drug development and manufacturing. The method I have discovered is a new and practical solution towards this problem. . . .

My current research project is the total synthesis of tumor necrosis factor α (TNF- α) production inhibitor natural product: trichodimeriol, by using our newly developed asymmetric cyano addition method as key reaction. Trichodimeriol showed inhibitory activity against production of TNF- α and, consequently, is considered to be a potential lead for the treatment of rheumatoid arthritis (RA), septic shock, inflammatory bowel disease (IBD), Crohn's disease and atherosclerosis.

The petitioner submits several witness letters. All of the witnesses are either on the faculty of Brandeis University, or they worked at Brandeis either as doctoral students or postdoctoral researchers while the petitioner was studying there. [REDACTED] who has supervised the petitioner's doctoral studies, states:

[The petitioner] has successfully and independently completed a large body of very important research work on the preparation of chiral hemiesters. . . . Because prior synthetic methods for the preparation of these chiral hemiesters were expensive, wasteful and time consuming, development of a highly efficient catalytic asymmetric method is a highly desirable, yet a challenging goal in the field of organic synthesis.

[The petitioner] devoted himself full-time to this challenging project. He first discovered a new class of highly efficient catalysts for this reaction. The method is also very important for commercial manufacturing of drugs because the catalysts discovered by [the petitioner], made from abundant natural products, are highly accessible, inexpensive and fully recyclable.

[The petitioner] has also developed a new method for the preparation of chiral succinates through a highly efficient parallel kinetic resolution (PKR) process . . . paving the way for the discovery of more effective therapeutic reagents [with] less side effects. . . .

Each piece of [the petitioner's] work represents an important advancement in organic synthesis. . . .

[The petitioner] is a researcher of international renown. His accomplishments thus far in his career have already had a huge impact on the drug discovery and manufacturing.

The other witnesses offer similar descriptions of the petitioner's work and its "great impact" on the field. These witness statements, by themselves, do not establish that the petitioner's work is known outside of the faculty and alumni of Brandeis University. To establish wider impact, the petitioner submits copies of over 20 articles that contain independent citations of his published work (not counting self-citations by the petitioner's collaborators). Several of these articles cite more than one of the petitioner's articles. One of the citing articles indicates that the petitioner and his collaborators "reported on a very attractive alternative means for the desymmetrization of prochiral cyclic anhydrides." Another citation states: "a recent report by Deng and co-workers . . . appears to constitute a significant breakthrough in this field." The petitioner is the first author of the article thus described. These comments indicate that the petitioner's work has attracted some degree of attention beyond many of the other cited works.

The director denied the petition, acknowledging the intrinsic merit of the petitioner's work but finding that it lacks national scope. The director also stated that the petitioner had not shown that his "individual contributions as a researcher were or are beyond the capabilities of any number of trained professionals in his field." The director stated that the record did not show extensive citation of the petitioner's published work. The decision contains no acknowledgment of the special notice that the petitioner's work gained in some of the articles that did cite that work.

The director, in denying the petition, concluded that the petitioner has not shown that his work is national in scope. We have held, however, that medical and scientific research at major institutions is inherently national in scope, because the results are disseminated nationally (and internationally) through publications and conferences and because the findings of such research tend to apply universally rather than only locally. We therefore withdraw the director's finding that the petitioner's work lacks national scope.

On appeal, the petitioner submits materials relating to his achievements as a postdoctoral researcher at Harvard University. The petitioner had not yet begun this work when he filed the petition, and therefore these materials cannot retroactively demonstrate that he was already eligible as of the filing date. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). For the purposes of the present proceeding, we must limit consideration to the petitioner's achievements as of the filing date, and the impact thereof.

With regard to the impact of the petitioner's work prior to filing the petition, the petitioner demonstrates on appeal that the number of citations of this work continues to grow. The petitioner also submits three new letters on appeal. Unlike the letters submitted initially, the new letters are from independent witnesses rather than individuals with close ties to the beneficiary through Brandeis University. Professor Alan C. Spivey of Imperial College, London, states that he has long been familiar with the petitioner's work, and that the petitioner "is clearly the leader in the development of asymmetric catalytic desymmetrizations." Prof. Spivey had commented positively on the petitioner's work in a review article published previously. Prof. Spivey adds that "other researchers from different disciplines" have cited the petitioner's work, showing that the petitioner's "contributions have also had a significant impact on other fields" outside his own specialty.

██████████ assistant professor at Colorado State University, states that the petitioner's "research work represents the most spectacular achievement in this area" and "is a remarkable milestone in the area of cinchona alkaloid catalysis." ██████████ director of research at the National Center for Scientific Research in Gif-sur-Yvette, France, offers similar praise for the petitioner's work. While the record lacked independent letters prior to the denial, we note that the director never issued a request for evidence, and therefore, prior to the denial, the director never informed the petitioner that the lack of independent letters played a part in the denial of the petition.

Between the citation of the petitioner's work, which includes special mention of the importance of the petitioner's discoveries, and the independent letters submitted on appeal, which show the extent to which the petitioner's work has attracted attention outside of his own circle of collaborators, the evidence is persuasive that the petitioner's impact as a researcher has been, and is likely to continue to be, of such a caliber as to justify a waiver of the job offer requirement in the national interest.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the materials in the record establish that the scientific community recognizes the significance of this petitioner's

research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.